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SS**COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C §§ 1983**Name BONE DONALD DOUGLAS

(Last) (First) (Initial)

Prisoner Number P. 30877Institutional Address CALIFORNIA MENS COLONY WEST
P.O. Box 8301, SAN LOUIS OBISPO, CA.
93403 - 8301FEB 27 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MMC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DONALD DOUGLAS BONE

(Enter the full name of plaintiff in this action.)

DIRECTOR vs.

CALIFORNIA DEPT. OF CORRECTIONS & REHABILITATION

WARDEN JOHN MARSHAL)

CALIFORNIA MENS COLONY)

OFFICIALLY AND INDIVIDUALLY et al)

(Enter the full name of the defendant(s) in this action))

CV 08

1156

Case No.

(To be provided by the clerk of court)

COMPLAINT UNDER THE
CIVIL RIGHTS ACT,
42 U.S.C §§ 1983

(PR)

Ring

[All questions on this complaint form must be answered in order for your action to proceed.]**1. Exhaustion of Administrative Remedies****[Note: You must exhaust your administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.]**A. Place of present confinement CALIFORNIA MENS COLONY

B. Is there a grievance procedure in this institution?

YES () NO ()

C. Did you present the facts in your complaint for review through the grievance procedure?

YES () NO ()

D. If your answer is YES, list the appeal number and the date and result of the

CTF S 07-04021

AO 27-1156 MMC

1 appeal at each level of review. If you did not pursue a certain level of appeal,
2 explain why.

3 1. Informal appeal By PASS
4

5 2. First
6 formal level CTF-S 07-04021 FILED Aug 20, 2007
7 REPLY DENIED

8
9 3. Second formal level CTF-S 07-04021 FILED Oct 10, 2007
10 INTERVIEWED By P.G. DENNIS, APPEALS COORDINATOR OCT 20, 2007
11 DENIED ACCESS TO MY OWN ATTORNEYS DENIED A Third
12 formal level CTF-S 07-04021 FILED Nov 13, 2007 C.T.F. R&R
13 DEC 12, 2007 N. GRANNIS DENIED

14
15 E. Is the last level to which you appealed the highest level of appeal available to
16 you? SEE : DIRECTORS LEVEL APPEAL DECISION
17 LOG NO. CTF-S 07-04021 [EXHIBIT A]
18 YES (X) NO ()

19 F. If you did not present your claim for review through the grievance procedure,
20 explain why.
21

N/A

22 II. Parties

23 A. Write your name and your present address. Do the same for additional plaintiffs,
24 if any.

25 DONALD D BONE P. 30877

26 C.M.C. WEST 4-24-34

27 P.O. Box 8301, SAN Luis OBISPO, CA. 93403-8301

28 B. Write the full name of each defendant, his or her official position, and his or her

1 place of employment. DIRECTOR _____
2 CALIFORNIA DEPARTMENT OF CORRECTIONS & REHABILITATION
3 1515 "K" STREET, SACRAMENTO, CA. 95814
4 WARDEN JOHN MARSHAL CALIFORNIA MENS COLONY
5 P.O. Box 8301 SAN LOUIS OBISPO, CA. 93403-8301
6 et al III.

7 Statement of Claim

8 State here as briefly as possible the facts of your case. Be sure to describe how each
9 defendant is involved and to include dates, when possible. Do not give any legal arguments or
10 cite any cases or statutes. If you have more than one claim, each claim should be set forth in a
11 separate numbered paragraph. I

COMPLAINT

12
13 THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION
14 IS ATTEMPTING TO TRANSFER PLAINTIFF TO AN
15 OUT-OF-STATE CORRECTIONAL FACILITY IN OKLAHOMA.

16
17 THIS IS THE 2ND ATTEMPT BY DEFENDANT TO TRANSFER
18 PLAINTIFF; WHEN PLAINTIFF WAS FOUND "MEDICALLY INELIGIBLE"
19 AND SENT TO CALIFORNIA MENS COLONY FOR MEDICAL TREATMENT
20 WHICH DEFENDANT CONTINUES TO REFUSE TO PROVIDE.

21
22 SEE : ATTACHED

23 MEMORANDUM OF POINTS AND AUTHORITIES

24
25 IV. Relief

26 Your complaint cannot go forward unless you request specific relief. State briefly exactly
27 what you want the court to do for you. Make no legal arguments; cite no cases or statutes.

1 ISSUE ORDER TO SHOW CAUSE OR EVIDENTIARY HEARING

2 ISSUE INJUNCTIVE ORDER / TEMPORARY RESTRAINING ORDER

3 AGAINST DEFENDANT UNTIL SUCH TIME AS ALL CONSENT AND

4 LEGAL CONSULTATION IS AFFORDED TO PLAINTIFF IN ACCORDANCE

5 WITH STATE AND FEDERAL LAWS.

6 APPOINT COUNSEL OR AWARD ATTORNEYS FEES

7 GRANT ANY AND ALL OTHER RELIEF DEEMED NECESSARY OR APPROPRIATE

8
9 I declare under penalty of perjury that the foregoing is true and correct.

10
11 Signed this 21st day of February, 2008

12
13 
14 DONALD DOUGLAS BONG
15 (Plaintiff's signature)

16
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25
26
27
28 PREPARED BY: ZENAS

COMPLAINT

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

INSTRUCTIONS FOR FILING A COMPLAINT BY A PRISONER
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. §§ 1983

I. 42 U.S.C. §§ 1983

You may file an action under 42 U.S.C. §§ 1983 to challenge federal constitutional or statutory violations by state actors which affect the conditions of your confinement.

A §§ 1983 action may not be used to challenge the length of your sentence or the validity of your conviction. Such claims must be addressed in a petition for a writ of habeas corpus, on the correct forms provided by the clerk of the court.

II. Filing a §§ 1983 Action

To file a §§ 1983 action, you must submit: (1) an original complaint and (2) a check or money order for \$250.00 or an original Prisoner's In Forma Pauperis Application.

This packet includes a complaint form and a Prisoner's In Forma Pauperis Application. When these forms are fully completed, mail the originals to: Clerk of the United States District Court for the Northern District of California, 450 Golden Gate Avenue, Box 36060, San Francisco, CA 94102.

III. Filing Fees

Under the Consolidated Appropriations Act of 2005, the filing fee for a § 1983 action filed on or after February 7, 2005 has been increased to \$250.00 from \$150.00, to be paid at the time of filing. If you are unable to pay the full filing fee at this time, you may petition the court to proceed in forma pauperis, using the Prisoner's In Forma Pauperis Application in this packet. You must fully complete the application and sign and declare under penalty of perjury that the facts stated therein are true and correct.

Each plaintiff must submit his or her own Prisoner's In Forma Pauperis Application. You must use the Prisoner's In Forma Pauperis Application provided with this packet and not any other version.

IV. Complaint Form

You must complete the entire complaint form. Your responses must be typewritten or legibly handwritten and you must sign and declare under penalty of perjury that the facts stated in the complaint are true and correct. Each plaintiff must sign the complaint.

Under 42 U.S.C. §§ 1997e, you are required to exhaust your administrative remedies before filing a §§ 1983 action; you must indicate clearly on the complaint form whether you have done so.

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA
4
5
6

7 CASE NO. _____
8
9

10 DONALD D BONE
11 Plaintiff
12 v.
13 DIRECTOR
14 CALIFORNIA DEPARTMENT OF
15 CORRECTIONS AND REHAB
16 AND
17 WARDEN
18 CALIFORNIA MEN COLONY
19 OFFICIALLY AND INDIVIDUALLY
20 Defendants et al)
21)
22)
23)
24)
25)
26)
27)
28)

COMPLAINT UNDER THE
CIVIL RIGHTS ACT
TITLE 42 USC § 1983

C.O.C.F.

CALIFORNIA OUT-OF-STATE CORRECTIONAL FACILITY
TRANSFERS

MEMORANDUM OF POINTS AND
AUTHORITIES

IN NOMINI DOMINI NOSTRA JESUS CHRISTI

MEMORANDUM OF POINTS AND AUTHORITIESI JURISDICTION

1
2 THIS ACTION ARISES OUT OF AN ACT BY DEFENDANT TO
3 FORCE PLAINTIFF INTO AN ILLEGAL ACT OF COMPULSORY
4 TRANSFER WITHOUT PROVIDING MANDATORY CONSENT AND
5 PROHIBITING HIM ACCESS TO HIS LEGAL COUNSEL, IN VIOLATION
6 OF LOCAL, STATE, FEDERAL AND CONSTITUTIONAL LAWS.

7 WHEREFORE, DEFENDANT LOCATED IN SACRAMENTO, AND INITIAL ACTION
8 COMMENCED IN NORTHERN DISTRICT; THE PROPER VENUE FOR THIS
9 CLAIM LIES WITHIN THE CIVIL RIGHTS ACT; 42 U.S.C. § 1983 AND
10 THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF
11 CALIFORNIA. PLAINTIFF HAS TIMELY EXHAUSTED ALL ADMINISTRATIVE
12 REMEDIES [EXHIBIT A]

13
14 A FEDERAL COURT MUST CONSIDER A PRELIMINARY SCREENING IN ANY
15 CASE IN WHICH A PRISONER SEEKS REDRESS FROM A GOVERNMENT
16 AGENCY OR OFFICER OR EMPLOYEE OF A GOVERNMENT ENTITY 28 USC § 1915(a)

II CHRONOLOGICAL DETAILS

17 SEPT 5, 2007 CHRONO - ELIGIBLE FOR TRANSFER DENTAL [EXHIBIT G]
18 I WAS NOT EXAMINED BY ANY DENTAL STAFF ON THE DATE
19 IN QUESTION - NOR ANY OTHER TIME FOR THE PURPOSE OF DENTAL
SCREENING.

20 DENTAL STAFF IE DR. P. BABIEUCO, J. O'NEIL, AND K.B. SATHER OPS WERE
21 AWARE OF MY IMPACTED TEETH AND HAVE REFUSED TREATMENT
22 FOR REFERENCE SEE: CASE # C 07-3314 (PR) BEFORE US DISTRICT
COURT, NORTHERN DISTRICT

23 OCT 4, 2007 PLAINTIFF INFORMED MR. ABE CAHMY THAT HIS LEGAL SERVICES
24 WERE DECLINED [EXHIBIT B] AND THAT HE WOULD AVAIL
25 HIMSELF OF HIS OWN ATTORNEYS ON RETAINER. (RUTLEDGE & BALDWIN)
HE WAS DENIED ACCESS TO HIS ATTORNEYS BY CDC&R.

26 OCT 10, 2007 PLAINTIFF APPEARED BEFORE UCC COMMITTEE WITH WARDEN
27 BEP CURRY, ASS. WARDEN J. SOARES AND FACILITY CAPTAIN TUCKER AT
SOLEDAD FACILITY AND SUBMITTED ON RECORD A WRITTEN "CURRENT
STATUS" AS REGARDS EXCLUSION FROM C.O.C.F. FACTORS SUCH AS:

- INTERNATIONAL TRANSFER TO CORRECTIONS CANADA (IN FINAL STAGE)

- PENDING LEGAL CASES IN CALIFORNIA
CIVIL - SUPERIOR COURT OF CALIFORNIA CASE # 106 FL 13677
CIVIL - UNITED STATES DISTRICT COURT
NORTHERN DISTRICT CASE # C 07-3314

CRIMINAL - UNITED STATES COURT OF APPEALS CASE # 06-16095
FOR THE 9TH CIRCUIT

1 - LEGAL REPRESENTATION

[EXHIBIT C]

2 OCT 10, 2007 AT UCC COMMITTEE PLAINTIFF AGAIN STATED HIS EXPRESS
3 RIGHT TO COUNSEL OF HIS CHOICE [EXHIBIT D]
4 (CAL. PENAL CODES §§ 2911, 17191)

5 OCT 19, 2007 APPEALS COORDINATOR P.G. DENNIS REVIEWED 2ND LEVEL APPEAL
6 (CDC 602) CCR TITLE 15 § 3084 et seq AND DENIED APPEAL;
7 RETURNED TO PLAINTIFF OCT 22, 2007.

8 NOV 13, 2007 PLAINTIFF FILED 3RD (FORMAL) LEVEL OF APPEAL [EXHIBIT A]
9 WITH CORRECTION OFFICER WILKERSON C.T.F. R&R

10 NOV 13, 2007 PLAINTIFF WAS TRANSFERRED FROM C.T.F. SOLEDAD TO WASCO
11 STATE PRISON RECEPTION CENTER.

12 NOV 20, 2007 WHILE AT WASCO STATE PRISON, PLAINTIFF WAS DIAGNOSED
13 BY LOCAL M.T.A./RN (T. SMITH) AND FOUND TO BE MEDICALLY
14 INELIGIBLE FOR OUT-OF-STATE TRANSFER [EXHIBIT E]

15 DEC 5, 2007 PLAINTIFF WAS TRANSFERRED BACK FROM WASCO TO CTF
16 SOLEDAD.

17 DEC 27, 2007 PLAINTIFF APPEARED BEFORE UNIT IV UCC COMMITTEE FOR
18 PLACEMENT BACK INTO GENERAL POPULATION OF CTF SOLEDAD

19 DEC 26, 2008 PLAINTIFF WAS AGAIN CALLED BEFORE UCC COMMITTEE AND PUT-UP
20 FOR TRANSFER AGAIN; THIS TIME ON THE PREMISE OF AN ENEMY
21 CONCERN. THAT ENEMY CONCERN WAS A BATTERY ON PLAINTIFF
22 THAT OCCURRED JULY 6, 2006; PLAINTIFF DID NOT RETALIATE
23 TO A SIMPLE FIST FIGHT, AND REQUESTED SARGENT THAT NIGHT THAT
24 A "COMPATABILITY CHRONO" BE AGREED UPON BETWEEN INMATES.
25 BUT SARGENT REFUSED. PLAINTIFF WAS MOVED FROM SOLEDAD
26 NORTH TO SOLEDAD EAST DORM WHERE HE REMAINED
27 WITHOUT INCIDENT UNTIL COMMITTEE DECIDED HE WAS AT
28 "RISK" 1 1/2 YEARS AFTER THE INCIDENT!

JAN 15, 2008 PLAINTIFF WAS TRANSFERRED FROM C.T.F. SOLEDAD TO C.M.C. WEST
SAN LOUIS OBISPO, CA. WITHOUT OBJECTION

FEB 13, 2008 PLAINTIFF WAS EXAMINED BY DR. MALEK FOR DENTAL PROBLEMS
AND WAS REFUSED TREATMENT.

FEB 15, 2008 PLAINTIFF APPEARED BEFORE UCC COMMITTEE AT C.M.C. FOR
IN VOLUNTARY TRANSFER (2ND C.O.C.F. TRANSFER) TO OUT-OF-STATE
CORRECTIONAL FACILITY IN OKLAHOMA. [EXHIBIT F]

III LEGAL ARGUMENT

1 IN STATING THIS CLAIM UNDER 42 USC § 1983 PLAINTIFF ALLEGES
 2 THAT: (1) HIS CONSTITUTIONAL RIGHTS AS GUARANTEED BY THE LAWS
 3 OF THE UNITED STATES WERE VIOLATED AND THAT (2) THE DIRECTOR
 4 OF CORRECTIONS; WARDEN OF C.M.C. WEST AND HIS REPRESENTATIVES
 5 AT ICC COMMITTEE ACTING UNDER COLOR OF AUTHORITY COMMITTED
 6 OR ALLOWED THOSE VIOLATIONS TO OCCUR. *WEST v. ATKINS* 487 U.S. 42, 48 (1988)

7
 8 FIRST AND FOREMOST; TO SET THE RECORD STRAIGHT -

9 PLAINTIFF IS NOT ATTACKING THE STATE'S RIGHT TO TRANSFER
 10 INMATES FROM ONE INSTITUTION TO ANOTHER; AND IN FACT COMPLAINED
 11 WITHOUT OBJECTION TO HIS TRANSFER FROM C.T.F. SOLEDAD TO C.M.C. WEST.

12 HOWEVER;

13 WHAT THIS WRIT IS ATTACKING IS THE FACT THAT A FORCED
 14 OUT-OF-STATE TRANSFER - THAT IS NOT IN COMPLIANCE WITH STATE AND
 15 FEDERAL CONSTITUTIONAL PROTECTIONS, AND THAT PLAINTIFF HAS BEEN FOUND
 16 PREVIOUSLY INELIGIBLE FOR TRANSFER AND NOW DEFENDANTS ARE
 17 PERSECUTING HIM AS A METHOD OF PUNISHMENT AND IGNORING HIS
 18 MEDICAL AND DENTAL CONDITIONS CONSTITUTES CRUEL AND UNUSUAL
 19 PUNISHMENT IN VIOLATION OF THE EIGHTH AMENDMENT'S CONSTITUTIONAL RIGHTS

IV CASE LAW

DEFENDANTS WILL NO POORLY CITE *OLIN v. WAKINAKONA* 461 U.S. 238, 248 (1983) AS A CONTROLLING CASE WITH REGARD TO LONG DISTANCE
 INTER-STATE TRANSFERS, STATING THAT PRISONERS HAVE NO CONSTITUTIONAL
 RIGHT TO INCARCERATION IN A PARTICULAR INSTITUTION. IN THE CASE OF
 WAKINAKONA SUPER LET US SET THE RECORD STRAIGHT JUST WHY WAKINAKONA
 (A.K.A. "PINEAPPLE") WAS TRANSFERRED FROM OAHU STATE PRISON HAWAII TO
 OLD FOLSOM - REPRESSA CA. WAKINAKONA WAS AN EXTREMELY
 VIOLENT CRIMINAL, AND IT HAS SERIOUSLY INJURED MANY (UP TO 6) INMATES

1 WHILE AT OHDU PRISON. MANY OTHER INMATES WERE "OUT-TO-GET HIM"
 2 IE. A PLANNED KILLING OF WAKINAKONA. THE WARDEN, OLIM HAD
 3 NO CHOICE BUT TO "GET RID OF" WAKINAKONA, OR FACE GREAT VIOLENCE
 4 WITHIN THE PRISON. THIS GAVE HIM ENOUGH AUTHORITY TO FORCE THE
 5 LONG-DISTANCE TRANSFER TO MAINLAND CALIFORNIA - AWAY FROM ALL
 6 HIS NATIVE HAWAIIAN FAMILY. HENCE IT BECOMES A CONTROLLING CASE
 7 FOR TRANSFER OBJECTIONS.

8 OUR CASE DOES NOT FALL UNDER WAKINAKONA; AS IT IS NOT THE
 9 DISTANCE THAT WE ARE OBJECTING TO; BUT THE DUE PROCESS OF
 10 OUT-OF-STATE TRANSFER.

11
 12 NEAT LET US DEAL WITH MEACHUM v. FANO 427 U.S. 215; 49 L.Ed.2d
 13 451 (1976) THE BACKGROUND PRECEDING LARRY MEACHUM'S INMUNARY TRANSFER
 14 FROM THE MASSACHUSETTS CORRECTIONAL INSTITUTION AT NORFOLK WAS THAT
 15 DURING A 2 1/2 MONTH PERIOD IN 1974 THERE WERE NINE SERIOUS FIRES SET
 16 AS INFORMANTS TESTIMONIES POINTED TO MEACHUM AND 5 OTHER RESPONDENTS
 17 WHO WERE RESPONSIBLE FOR THE FIRES. AGAIN, JUST CAUSE TO WARRANT
 18 ADVERSE TRANSFER. "ENGAGED IN CRIMINAL CONDUCT" *Id* AT P. 2535
 19 MEACHUM HOWEVER RAISED THE QUESTION OF DUE PROCESS CLAUSE
 20 CONTAINED IN THE FOURTEENTH AMENDMENT WHICH ENTITLES STATE PRISONER
 21 TO A (FULL AND FAIR) HEARING WHEN HE IS TRANSFERRED. "ABSENT A
 22 "STATE LAW OR PRACTICE CONDITIONING SUCH TRANSFERS" *Id* AT 2534
 23 THE MEACHUM COURT CONCLUDED THAT: "THE COURT INDICATES THAT A
 24 "LIBERTY INTEREST" MAY HAVE EITHER OF TWO SOURCES ACCORDING TO THE
 25 COURT, A LIBERTY INTEREST MAY ORIGINATE IN THE CONSTITUTION, SUPRA
 26 AT 2539 OR IT MAY HAVE "ITS ROOTS IN STATE LAW" *Id* AT 2541
 27 WITH RESPECT TO PLAINTIFF, IN VIEW OF THE MEACHUM CASE,
 28 1ST PLAINTIFF HAS NOT ENGAGED IN ANY SERIOUS CRIMINAL ACTS

1 IN 9 YEARS AND 11 MONTHS OF CONFINEMENT THAT WOULD WARRANT TRANSFER
 2 OUT-OF-STATE. CONVERSELY PLAINTIFF HAS TAKEN GREAT CARE TO "PROGRAM"
 3 OBEDIENTLY, HOLDING A 1A STATUS SINCE 1999 AND EMPLOYED AT
 4 WHATEVER JOB PRISON OFFICIALS GAVE TO HIM; INCLUDING PRISON
 5 INDUSTRY AUTHORITY TEXTILES AND WOOD PRODUCTS DIVISIONS.

6 PLAINTIFF CLAIMS DUE PROCESS VIOLATIONS OF THE XIV AMENDMENTS
 7 RIGHT TO DUE PROCESS OF LAW, OR TO DENY PERSONS WITHIN ITS JURISDICTION
 8 EQUAL PROTECTION OF THE LAW. US CONSTITUTIONAL AMENDMENT XIV

9 PLAINTIFF WAS DENIED DUE PROCESS IN SEVERAL WAYS:

10 a) PLAINTIFF WAS DENIED THE "RIGHT TO A PRIVATE CONSULTATION
 11 WITH AN ATTORNEY OF HIS CHOICE" CAL. PENAL CODE § 11191 (2007)

12 b) PLAINTIFF WAS PROHIBITED FROM BEING INFORMED OF THOSE RIGHTS
 13 "PRIOR TO EXECUTING THE WRITTEN CONSENT" CAL. PENAL CODE § 11191 (2007)
 14 AND AT NO TIME WAS OFFERED OPPORTUNITY OR GAVE WRITTEN
CONSENT AS REQUIRED BY STATE LAW JOHNSON V. MOORE 948 F.2D 513, 519
 (9TH CIR 1991)

15 c) PLAINTIFF HAS BEEN DENIED DUE PROCESS RIGHTS IN THAT HE HAS
 16 BEEN FOUND MEDICALLY INELIGIBLE [EXHIBIT E] BY COC STAFF
 17 AND IN ACCORDANCE WITH CAL. PENAL CODE § 11191 (b) "NOTWITHSTANDING
 18 SUBDIVISION (a) NO INMATE WITH SERIOUS MEDICAL OR MENTAL HEALTH
 19 CONDITIONS, AS DETERMINED BY THE PLATA RECEIVER OR AN INMATE
 IN THE MENTAL HEALTH DELIVERY SYSTEM AT THE ENCLASSED
 OUTPATIENT PROGRAM LEVEL OF CARE OR HIGHER MAY BE COMMITTED
 OR TRANSFERRED TO AN INSTITUTION OUTSIDE OF THIS STATE UNLESS HE
 HAS EXECUTED A WRITTEN CONSENT TO THE TRANSFER" CAL PENAL CODE § 11191(b)

20 d) PLAINTIFF IS BEING FORCED TO TRANSFER WITHOUT GIVING WRITTEN
 21 CONSENT AS CONTAINED IN STATE LAW. CALIFORNIA PENAL CODE,
 22 CHAPTER 7 ARTICLE 1.5 TRANSFER OF PRISONERS § 2911 CONSENT TO TRANSFER
 23 SUBSECTION (c) "NO INMATE MAY BE TRANSFERRED FROM AN INSTITUTION
 24 WITHIN THIS STATE TO A FEDERAL FACILITY PURSUANT TO A CONTRACT ENTERED
 25 INTO PURSUANT TO SUBDIVISION (a) UNLESS HE OR SHE HAS EXECUTED, IN THE
 26 PRESENCE OF THE WARDEN OR OTHER HEAD OF THE INSTITUTION IN THIS STATE
 IN WHICH HE OR SHE IS CONFINED, A WRITTEN CONSENT TO TRANSFER
 THE INMATE SHALL HAVE THE RIGHT TO A PRIVATE CONSULTATION WITH
 AN ATTORNEY OF HIS CHOICE CONCERNING HIS OR HER RIGHTS AND
OBLIGATIONS UNDER THIS SECTION PRIOR TO HIS OR HER APPEARANCE
 BEFORE THE WARDEN OR OTHER HEAD OF THE INSTITUTION FOR THE
 PURPOSE OF EXECUTING THE WRITTEN CONSENT. CAL PENAL CODE § 2911

27 e) PLAINTIFF WAS DENIED DUE PROCESS IN THAT ACCORDING TO
 28

1 CALIFORNIA CODE OF REGULATIONS TITLE 15 § 3379 INMATE TRANSFERS
 2 TRANSFER SHALL NOT OCCUR PRIOR TO INMATE SIGNING A CDC FORM
 3 294 INTERSTATE COMPACT PLACEMENT AGREEMENT WITNESSED BY
 THE INSTITUTION HEAD OR DELEGATE. CCR TITLE 15 § 3379(q)(6)
 MONTANYE V. HAYNES 427 US 236, 242 (1976)

4 P) PLAINTIFF WAS DENIED DUE PROCESS BY FAILURE TO FOLLOW DEPARTMENT
 5 GUIDELINES CONTAINED IN D.O.M. § 62040.16 CONSENT
 "NO INMATE SHALL BE TRANSFERRED TO A FEDERAL FACILITY UNLESS THEY
 6 HAVE EXECUTED IN THE PRESENCE OF THE WARDEN OR DESIGNEE A
 7 WRITTEN CONSENT TO TRANSFER CDC FORM 802 FEDERAL PRISON SYSTEM
 PLACEMENT AGREEMENT. INMATES SHALL BE INFORMED OF
 8 THEIR RIGHT TO PRIVATE CONSULTATION WITH AN ATTORNEY OF THEIR
 CHOICE CONCERNING ONE'S RIGHTS AND OBLIGATIONS UNDER
 9 PC 2911." D.O.M. § 62040.16 CONSENT

10 ADDITIONALLY; IN MACHUM THE SYLLABUS STATES:

11 a) GIVEN A VALID CONVICTION THE CRIMINAL DEFENDANT HAS BEEN
 12 CONSTITUTIONALLY DEPRIVED OF HIS LIBERTY TO THE EXTENT THAT
 13 THE STATE may CONFINE HIM AND SUBJECT HIM TO THE RULES
 DO NOT OTHERWISE VIOLATE THE CONSTITUTION. *Id.* AT 2534

14 PLAINTIFF WOULD BE CONSTITUTIONALLY DEPRIVED OF THESE RIGHTS IN AN

15 IN VOLUNTARY TRANSFER OUT-OF-STATE IN THAT HE CONTENTS THAT:

16 a) His Criminal Conviction is INVALID AND IS CURRENTLY ON APPEAL

17 IN THE UNITED STATES COURT OF APPEALS FOR THE 9TH CIRCUIT

18 CASE NO. 06-16095. THAT COURTS RULES OF APPELLATE

19 PROCEDURE F.R.A.P. RULE 23(a) SPECIFICALLY PROHIBIT TRANSFER

20 OUT OF THE COURTS JURISDICTION (THIS POINT IS ON RECORD WITH

21 THE 9TH CIRCUIT COURT) INTENTIONAL AND UNJUSTIFIABLE INTERFERENCE

22 WITH THE RIGHT TO OBTAIN JUDICIAL REVIEW OF THE LEGALITY OF

23 CONFINEMENT.

24 PLAINTIFF APPEARED BEFORE ICC COMMITTEE AT CMC, WEST ON

25 FEB 15, 2008 [EXHIBIT F] AGAIN FOR CONSIDERATION OF OUT-OF-STATE

26 TRANSFER. AT THIS MEETING PLAINTIFF WAS INFORMED OF

27 COMMITTEES DECISION TO ELECT HIM FOR OUT-OF-STATE TRANSFER

1 TO OKLAHOMA. NO MEDICAL OR DENTAL SCREENING WAS DONE PRIOR
 2 NOR WAS PLAINTIFF PERMITTED TO CONSULT WITH HIS ATTORNEY.
 3 WHEN COMMITTEE ALLOWED PLAINTIFF TO ASK QUESTIONS AND PRESENT
 4 EVIDENCE, HE ASKED COMMITTEE:

- 5 1) IF IT WAS AWARE OF VIOLATIONS OF STATE AND FEDERAL LAWS
- 6 2) THAT HE HAD NOT BEEN ALLOWED ATTORNEY ACCESS
- 7 3) THAT HE WAS MEDICALLY INELIGIBLE FOR TRANSFER

8 AND WAS ABOUT TO PRESENT EVIDENCE THAT THE LITIGATION COORDINATOR
 9 MR. DAN PHERIGO OF C.D.C. SACRAMENTO, IN A LETTER TO KATHLEEN
 10 BOEGERS, CLERK OF THE 9TH CIRCUIT COURT OF APPEALS FROM LINDA
 11 M. MURPHY/ U.S. DEPUTY ATTORNEY GENERAL STATED ON RECORD
 12 THAT: "MR. BONE WAS TRANSFERRED FROM C.T.F. SOLEDAD TO C.M.C.
 13 SAN LOUIS OBISPO TO RECEIVE MEDICAL TREATMENT.

14 "HE IS NOT BEING TRANSFERRED OUT-OF-STATE." [EXHIBIT H]

15 BUT

16 BEFORE PLAINTIFF COULD TABLE THIS EVIDENCE HE WAS ABRUPTLY
 17 CUT OFF BY CORRECTIONS OFFICER SANDOVAL WHO STATED: "OK BONE,
 18 PUT THE PENCIL DOWN THIS MEETING IS OVER." PLAINTIFF INFORMED
 19 THE COMMITTEE THAT HE WISHED TO MAKE 1 MORE POINT,
 20 BUT THE COMMITTEE REFUSED TO HEAR ANY FURTHER.

21 THIS IS A SIMILAR SITUATION TO SHANGO V. JURICH 681 F.2d 1091
 22 (7TH CIR 1982) QUOTING "BECAUSE SHANGO WAS TRANSFERRED WITHOUT
 23 A HEARING, THE COURT CONCLUDED THAT HE HAD BEEN DEPRIVED
 24 OF LIBERTY WITHOUT DUE PROCESS OF LAW."

25 IV CRUEL AND UNUSUAL PUNISHMENT

26 THE U.S. CONSTITUTION AMEND VIII PROTECTS PRISONERS FROM CONDITIONS
 27 OF CRUEL AND UNUSUAL PUNISHMENT.

1 PLAINTIFF HAS BEEN SUFFERING FROM AN IMPACTED TOOTH SINCE MAY 2006
 2 HE HAS EXHAUSTED HIS ADMINISTRATIVE REMEDIES; AND EVEN THE ATTENDING
 3 DENTIST P. BABINCO STATED: "MR. BONE I'M JUST WAITING UNTIL THE
 4 PAIN IS SO BAD THAT YOU BEG TO HAVE IT PULLED." GOES TO SHOW
 5 DELIBERATE INDIFFERENCE OF C.D.C. STAFF TOWARD INMATES.
 6 "TO SUSTAIN CLAIM FOR CRUEL AND UNUSUAL PUNISHMENT INMATE MUST
 7 PROVE DENIAL OF MINIMUM CIVILIZED MEASURE OF LIVES NECESSITIES
 8 OCCURRING THROUGH DELIBERATE INDIFFERENCE BY PRISON PERSONNEL OR
 9 OFFICERS." KEENAN v. HALL 83 F.3d 1083, 1089 (9TH CIR 1996).

10 VIMALICIOUS AND VENDICTIVE ACTION

11 PLAINTIFF HAS PREVIOUSLY UNDERGONE THE STRESS AND DISPLACEMENT
 12 OF FORCED OUT-OF-STATE TRANSFER TO ARIZONA; AND BEING FOUND
 13 INELIGIBLE WAS RETURNED TO HIS SENDING INSTITUTION.
 14 THE DEPT. OF CORRECTIONS WAS NOT SATISFIED TO LET THE PLAINTIFF
 15 RETURN TO HIS PREVIOUS JOB (HIS SUPERVISOR HAD HIGH REGARD AND GOOD
 16 RELATIONSHIP WITH HIM AS AN EMPLOYEE) AND HIS EARNED DORM ASSIGNMENT
 17 "MODEL BEHAVIOR AND EDUCATIONAL EFFORTS" RICKERT v. STERNS 149 F.S.
 18 452 (2001) BUT DECIDED TO "DIG UP SOMETHING" TO USE AGAINST HIM.
 19 AS PREVIOUSLY STATED THIS WAS DEEMED TO BE AN ENEMY CONCERN
 20 THAT THE DEPT HAD NOT ACTED UPON FOR 1½ YEARS, AND STEMMED
 21 FROM A SIMPLE ALTERCATION THAT PLAINTIFF RESTRAINED HIMSELF FROM
 22 RETALIATION. HE HE DID NOT STRIKE BACK MATTHEW 5:39, LUKE 6:29
 23 AND THIS IS HOW HE IS REWARDED. HE WAS TRANSFERRED AND OFFERED
 24 NO OBJECTION TO C.M.C. WEST ON JANUARY 15, 2008.
 25

26
 27 Now DEFENDANT AGAIN SEEKS TO PLACE THE HEALTH AND SAFETY
 28 OF PLAINTIFF IN JEOPARDY IN ATTEMPTING ANOTHER TRANSFER.

1 This Amounts to Little More than "Bus THERAPY"; AN UNWRITTEN
 2 POLICY TO CONTINUALLY MOVE INMATES FROM ONE INSTITUTION TO
 3 ANOTHER, NOT ALLOWING THEM TO SETTLE IN; LONG BUS RIDES AT ALL
 4 HOURS OF NIGHT, SHACKLED LIKE SLAVES - HANDS AND ANKLES, FREEZING COLD
 5 HOLDING TANKS, STRIPPED NAKED AND SEARCHED. ARRIVE AT A NEW PLACE
 6 FIND A JOB AND PROGRAM - WITHOUT THE ADDED STRESS OF ADAPTING TO A
 7 NEW ENVIRONMENT, ESTABLISH THEMSELVES WITH FELLOW INMATES AND
 8 SURVIVE SCRUTINY OF VARIOUS "SHOT CALLERS" WITH "PAPERWORK CHECKS"
 9 (REFERING TO CONVICTION CRIMES). SUCH WAS THE CASE IN WHITE
 10 v. LAMBERT 370 F.3d 1002 (2004) WHO WAS TRANSFERRED FROM D.O.C.
 11 FACILITIES TO CCCF ON NOV 2, 1999 AND ON JUNE 6, 2000 WAS RETURNED
 12 TO D.O.C. FACILITY IN WASHINGTON STATE.

13 VII INTERNATIONAL TRANSFER

14 PLANTIFF IS IN THE PROCESS OF AN INTERNATIONAL TRANSFER
 15 BETWEEN U.S. D.O.J. AND CORRECTIONS CANADA.
 16 THIS IS NOW IN ITS FINAL STAGES AND WILL LIKEY PROCEED
 17 IN THE NEAR FUTURE. THESE NEGOTIATIONS HAVE BEEN ONGOING
 18 SINCE 1999 WHEN PLANTIFF FIRST APPLIED TO C.D.C. THROUGH
 19 FORM #830 APPLICATION FOR TRANSFER AND HAS BEEN REPEATEDLY
 20 ISSUED (LAST AT REQUEST OF INMATES COUNSELOR) THIS POINT
 21 WAS MADE CLEAR AT 1ST UCC MEETING OCT 10, 2007 AND
 22 SPECIFIC DETAILS; CONTACTS AND REPRESENTATIVES OF C.D.C. SACRAMENTO
 23 AND CORRECTIONS CANADA WERE LISTED [EXHIBIT C]
 24 C.D.C. SACRAMENTO IS WELL AWARE OF PLANTIFF'S STATUS REGARDING
 25 HIS INTERNATIONAL TRANSFER, AND THEREFORE SHOULD REALIZE
 26 THAT AN OUT-OF-STATE TRANSFER TO ARIZONA - OKLAHOMA ETC
 27 WOULD ONLY DUPLICATE EFFORT, AND WASTE TAXPAYERS TIME, RESOURCES

1 AND MONEY IN BUS AND PLANE TRANSPORTATION COSTS.
2
3

4 THESE TRANSFERS FROM STATE OF CALIFORNIA TO CANADA ARE A
5 REGULAR AND ONGOING PROCESS; PLAINTIFFS GOOD FRIEND PAUL
6 (CORBAN) CLARK WAS TRANSFERRED FROM C.T.F. SQUADRON NORTH TO
7 TORONTO CANADA IN MAY 2006.

8 VIII CONCLUSION

9 PLAINTIFF HAS ESTABLISHED THAT HIS CONSTITUTIONAL AND STATE
10 LAW RIGHTS WERE VIOLATED, AND THAT A COMPLAINT UNDER THE
11 CIVIL RIGHTS ACT § 1983 IS THE PROPER VENUE FOR RELIEF.

12 PLAINTIFF HAS SET OUT IN CHRONOLOGICAL ORDER IN WHICH THOSE
13 VIOLATIONS OCCURRED, WITH SUPPORTING EXHIBITS.

14 PLAINTIFF HAS STATED HIS CLAIM WITH RESPECT TO CONSTITUTIONAL, FEDERAL
15 AND STATE LAWS THAT WERE VIOLATED, AND NOT THE OBJECT OF
16 OUT-OF-STATE TRANSFER THAT IS ERRONEOUS; BUT THE METHOD THAT
17 DEPT. OF CORRECTIONS IS APPLYING TO ENFORCE IT.

18
19 PLAINTIFF HAS DEMONSTRATED DEFENDANT'S DELIBERATE INDIFFERENCE
20 ON TWO (2) OCCASIONS (DENTAL - ICC MEETING) TO FOLLOW PROPERLY
21 PRESCRIBED LAWS AND POLICIES, THAT AMOUNT TO CRUEL AND UNUSUAL
22 PUNISHMENT AND DEFENDANT'S MALICIOUS AND VENDETTIVE ACTION TOWARD PLAINTIFF.

23
24 ACCORDINGLY; PLAINTIFF PETITIONS THIS COURT FOR THE FOLLOWING
25 RELIEF:

1 **IX RELIEF REQUESTED**

- 2
- 3 - ISSUE ORDER TO SHOW CAUSE OR EVIDENTIARY HEARING
- 4 - ISSUE TEMPORARY INJUNCTION AGAINST DEFENDANTS
5 TO PROHIBIT OUT-OF-STATE TRANSFER UNTIL ALL
6 PROCEDURAL PROTECTIONS ADDRESSED.
- 7 - APPOINT COUNSEL OR AWARD ATTORNEY FEES
- 8 - ISSUE RESTRAINING ORDER AGAINST DEFENDANT
9 TO PROHIBIT CONTINUAL HARASSMENT OR TRANSFER
10 OF PLAINTIFF
- 11 - ORDER DEFENDANT TO PROVIDE MEDICAL AND
12 DENTAL CARE TO PLAINTIFF
- 13
- 14
- 15
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- 28

DATED: FEB 21 2008

SIGNED: DONALD BONS
DONALD DOUGLAS BONS
PLAINTIFF

PREPARED BY: ZENAS

TABLE OF AUTHORITIES

		PAGE NUMBER
	<u>CASES</u>	
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2	KEENAN v. HALL 83 F.3d 1083, 1089 (9TH CIR 1996)	8
3	MEACHUM v. FANO 427 U.S. 215; 49 L.Ed.2d 451	4,6
4	MONTANYE v. HAYMES 427 U.S. 236, 242 (1976)	6
5	OLIM v. WAKINEKONA 461 U.S. 238, 248 (1983)	3
6	RICKERT v. STERNS 149 F.3d 452 (2001)	8
7	SHANGO v. JURICH 681 F.2d 1091 (7TH CIR 1982)	7
8	WHITE v. LAMBERT 370 F.3d 1002 (2004)	9
9	WEST v. ATKINS 487 U.S. 42, 48 (1988)	3
10		
11	<u>LAW</u>	
12	FEDERAL UNITED STATES CONSTITUTION <u>VIII</u> AMENDMENT	5
13	UNITED STATES CONSTITUTION <u>XIV</u> AMENDMENT	4
14	FEDERAL RULES OF APPELLATE PROCEDURE FRAP 23(a)	6
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EXHIBIT A

INMATE APPEALS BRANCH

P. O. BOX 942883

SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISION

Date: DEC 12 2007

In re: Donald Bone, P30877
 Correctional Training Facility
 P.O. Box 686
 Soledad, CA 93960

IAB Case No.: 0712526 Local Log No.: CTF-07-04021

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner E. Allen, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: It is the appellant's position that the Department is violating the United States Constitution, Federal and State law by involuntary transferring inmates to out-of-state facilities. The appellant requests to have his name removed from any and all out-of-state transfer lists.

II SECOND LEVEL'S DECISION: The reviewer found that the appellant has failed to demonstrate why he should be excluded from out-of-state transfer. A review of the information currently available indicates that the appellant is eligible for transfer and that the transfer does not pose a threat to his safety. The policies and procedures governing the out-of-state transfer were adhered to and he was deemed eligible for transfer. The appeal was denied by the Second Level of Review (SLR).

III DIRECTOR'S LEVEL DECISION: Appeal is denied.

A. FINDINGS: The Director's Level of Review (DLR) reviewed the issues of the appellant's appeal and reaffirms the institution's examination and conclusions as addressed within the SLR. The DLR notes that on October 17, 2007, a Classification Staff Representative (CSR) endorsed the appellant for transfer to California Out-of-State Correctional Facility. The transfer approval expires on February 14, 2008, and will require return to a CSR for re-authorization. The appellant's current Earliest Possible Release Date of September 18, 2018, does not exclude him from being transferred.

The information that the appellant provided does not alter his eligibility for involuntary transfer using the criteria currently in place. Furthermore, since the transfer is involuntary, consent is not required.

Every effort has been made to reduce the impact of out-of-state transfers on the inmate population as a whole. Therefore, a process was implemented, to identify those inmates least likely to have family ties, require special services, or be involved in programs that would be affected by an out-of-state transfer. The Governor's October 4, 2006 proclamation, which declared a state of emergency in the state's prison system and ordered the CDCR to transfer inmates out-of-state to alleviate overcrowding, did not include any of the discretionary criteria. The first involuntary transfer criteria group ordered by the Governor is "Inmates who: (a) have been previously deported by the federal government and are criminal aliens subject to immediate deportation; or (b) have committed an aggravated felony as defined by federal statute and are subject to deportation." This is any inmate with an active Immigration and Customs Enforcement (ICE) hold. It is noted that all inmates with an active ICE hold are currently subject to involuntary transfer regardless of race. This criteria group has no condition that only inmates without family ties were to be involuntarily transferred. Any inmate in the group is subject to involuntary transfer, regardless of family ties. The CDCR may have exercised its discretion by starting involuntary transfers with those inmates in the group with few family ties in California, but that exercise of discretion does not create a right for any inmate in the criteria group to be excluded from an involuntary transfer.

As to any right to consent to an out-of-state transfer, the California Penal Code Section 11191 was amended in May 2007, to delete the portion that required consent for transfers to out-of-state institutions. Any references to consent in the current Section 11191 apply only to inmates who have serious medical or mental health conditions. Any inmate without a serious medical or mental health condition has no

right to consent and therefore is subject to being involuntarily transferred to an out-of-state correctional facility. The section currently states: "(a) Any court or other agency or officer of this state having power to commit or transfer an inmate (as defined in Article II (d) of the Interstate Corrections Compact or of the Western Interstate Corrections Compact) to any institution for confinement may commit or transfer that inmate to any institution within or without this state if this state has entered into a contract or contracts for the confinement of inmates in that institution pursuant to Article III of the Interstate Corrections Compact or of the Western Interstate Corrections Compact. The inmate shall have the right to a private consultation with an attorney of his choice, or with a public defender if the inmate cannot afford counsel, concerning his rights and obligations under this section, and shall be informed of those rights prior to executing the written consent... (b) Notwithstanding subdivision (a), no inmate with serious medical or mental health conditions, as determined by the Plata Receiver, or an inmate in the mental health delivery system at the Enhanced Outpatient Program level of care or higher may be committed or transferred to an institution outside of this state unless he has executed a written consent to the transfer."

B. BASIS FOR THE DECISION:

California Penal Code Section: 2911, 5058, 11191
California Code of Regulations, Title 15, Section: 3004

California Emergency Services Act set forth at Title 2, Division 1, Chapter 7 of the California Government Code, commencing with Section 8550

C. ORDER: No changes or modifications are required by the Institution.

This decision exhausts the administrative remedy available to the appellant within CDCR.



N. GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, CTF
Appeals Coordinator, CTF
COCF

Exhibit B

October 4, 2007

Case 3:08-cv-01156-MMC Document 1 Filed 02/27/2008 Page 23 of 36

Mr. Abe Canhy
Attorney on Retainer to: C.D.C. &
Institute of Administrative Justice
231 Market Place #230
San Ramon, CA.
94583

Subject: PRISON TRANSFER PROGRAM (COCF)

Dear Sir: Pursuant to our conversation on Oct. 4, 2007; 09:00Hrs
C.T.F. Soledad "Y" Wing, and as I informed you personally, and those
Officers of the Institution present at this meeting:

I respectfully decline your Legal Advice Services as prescribed
by California Penal Code § 11191.

In accordance with this Law, and I quote: "The Inmate Shall have the
right to a Private Consultation with an Attorney of his choice....
(Bold and underlining added)

My choice is to avail myself of my own private attorneys who will
be in contact with you at the above address.

This same Right to Counsel of choice is echoed in: The Vienna
Convention 21 U.S.T. 77 T.I.A.S. #6820; CCR Title 15 § 3379 Inmate
Transfers; and D.O.M. § 62040.16 Consent.

Be advised that my Counsel is well versed in these matters and
highly concerned that Due Process of Law be followed to the letter.

Copies of this Notice will be forwarded to the California Parole
Advisory Board, C.D.C. Sacramento, and my attorneys.

Dated: Oct 4 2007

Signed: Donald D Bone
Donald D Bone

Donald D Bone P.30877
C.T.F. Soledad, East Dorm
P.O. Box 689
Soledad, CA. 93960-0689

Canadian Consulate General
cc: California Parole Advisory Board
C.D.C. Sacramento
M.F. Baldwin, Attorney at Law
Inmate Central File

IN NOMINI DOMINI NOSTRI JESUS CHRISTI

Exhibit C

	NAME	C.D.C.#	HOUSING UNIT
1	BONE, Donald D	P.30877	East Dorn ED-106u
2	(1) (Final Stage) INTERNATIONAL TRANSFER to: 3 Corrections Canada 4 Contact C.D.C. Ron Franz/Tim Baker C.D.C. Sacramento, 1515 "K" Street (916) 445-4072		
5	Contact	Corrections Canada Hanza Al-Baghdadi/Brian Bencze 340 Laurier Ave. West Ottawa, Ontario. CAN K1A 0P9 (613) 947-9708 Tel (613) 952-7676 Fax	
6	(2)		
7	Civil (a)	PENDING LEGAL CASES Superior Court of California Family Law Division 170 Park Center Plaza San Jose, CA. 95113 (408) 534-5711 (Clerks Office) (408) 534-5600 (Main Number) Requires Personal Court Appearance by Law	Case # 106FL 136777
8	Criminal (b)	Ninth Circuit Court of Appeals 95 Seventh Street San Francisco, CA. 94119-3939 (Court reply due: Sept. 10, 2007)	
9	MEDICAL/DENTAL		
10	Civil (c)	United States District Court 450 Golden Gate Ave. San Francisco, CA.	Case # C-07-3314 (PR)
11	Inmate Appeal #602 Log No. CTF-S-07-02116 Pending 3rd Level Appeal		
12	LEGAL REPRESENTATION		
13	Canadian Consulate General 550 S. Hope St. 9th Floor Los Angeles, CA. Myra Pastyry Lupal (Diplomatic Counselor) (213) 346-2721 Tel (213) 620-8827 Fax		
14	Maureen Furlong Baldwin Attorney at Law 586 N 1st Street Suite #221 San Jose, CA. 95112		
15	I acknowledge receipt of this document, acting under color of authority.		
16	Signed: _____		
17	Title: _____		

Exhibit D

M E M O R A N D U M

To: UCC Committee Oct 10, 2007 (COCF)

From: Donald D Bone P.30877
C.T.F. Soledad, ED-106u

Subject: RIGHT TO COUNSEL

It is my express wish that this Committee respect my Rights to consult with an Attorney of MY choice.

This Right is guaranteed by California Penal Code § 2911 and Penal Code § 11191.

The Department attempted to provide a State appointed Lawyer on Oct 4, 2007 at 09:40Hrs, a Mr. Abe Cahny.

As I explained to Mr. Cahny in person and in writing, notifying all applicable Authorities:

I decline the Legal Advice Service of the Representatives of the Department of Corrections (Defendants) and choose by Law; the appointment of counsel of my choice.

Until such time as I have been given access to my Legal Counsel, I respectfully request this meeting be postponed, in the interests of Due Process of Law, guaranteed by the Constitution of the United States.

Dated: Oct 10. 2007

Signed: Donald D Bone
Donald D Bone

EXHIBIT E

NUMBER: P30877 NAME: Bone, Donald HOUSING: COCF
A4 105U

ELIGIBILITY STATEMENT FOR OUT - OF - STATE TRANSFERS

This Inmate is: Ineligible Eligible

Reason: Medical Condition
 Mental Health
 Dental
 Pending Consultation
 Other _____

HOLD TEMPORARY
 PERMANENT

If HELD state the reason (i.e. Dental Code 1 etc.)

T. Smith, RN
Wasco State Prison - RC

Name/Title
(Print)

Jerry J. Smith

Signature

C-FILE

UHR

INMATE

DATE: 11-20-07

INFORMATIONAL CHRONO

INST: WSP-RC

128-C

Exhibit F

Exhibit G

ELIGIBILITY STATEMENT FOR OUT-OF-STATE TRANSFERS

Per the UHR Review, this inmate is:

 Eligible IneligibleReason: Medical Condition Mental Health Dental Pending Consultation TEMPORARY

If Temporary, state reason (i.e. Dental Code 1, etc.)

*Released dental ex - eligible to transfer
as class 3*M. N. Kelly
Clinician Name/Title
(Print)M. Madarrell
Signature-File
[redacted] File
mateATE: 9/5/07MEDICAL-DENTAL-
PSYCHIATRIC CHRONO

INST: CTF

Exhibit H



COPY

455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CA 94102-7004

Public: (415) 703-5500
Telephone: (415) 703-1334
Facsimile: (415) 703-1234
E-Mail: Linda.Murphy@doj.ca.gov

January 14, 2008

Ms. Kathleen Boegers
United States Court of Appeals
Ninth Circuit
95 Seventh Street
San Francisco, CA 94102

RE: *Donald Bone v. Gail Lewis*
United States Court of Appeals, Ninth Circuit, Case No. 06-16095

Dear Ms. Boegers:

As we discussed yesterday, I spoke with Dan Pherigo in the Litigation Coordinator's office at California Department of Corrections and Rehabilitation about the status of inmate Donald Bone. According to Mr. Pherigo, Mr. Bone was recently transferred back from Arizona for medical reasons. He is being transferred from the Soledad Facility (Correctional Training Facility) to the San Luis Obispo Facility (California Men's Colony), which is about 100 miles from Soledad, so he can receive medical treatment. He is not being transferred out of state. His medical transfer within the institution does not violate F.R.A.P. 23(a). I have no objection to any extension of time Mr. Bone may need in order to file his reply brief (and serve a copy on our office) in light of his transfer to CMC. I will be filing the appellee's brief by January 25, 2008.

Please call me if you have any further questions. Thank you.

Sincerely,

LINDA M. MURPHY
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

LMM:sc

bone ninth cir letter re transfer jan 2008.wpd

1 DECLARATION AND PROOF OF SERVICE BY MAIL

2 DONALD D BONE
3 Plaintiff

4 v.

5 DIRECTOR JAMES E TILTON
6 CALIFORNIA DEPARTMENT OF
7 CORRECTIONS & REHABILITATION

8 AND
9 WARDEN JOHN MARSHAL
10 CALIFORNIA MENS COLONY
11 OFFICIAL & INDIVIDUALLY
12 DEFENDANTS ET AL

CASE No. _____

C.O.C.F.

CALIFORNIA OUT-OF-STATE
CORRECTIONAL FACILITY

TRANSFERS

I DONALD DOUGLAS BONE, CITIZEN OF THE BRITISH COMMONWEALTH
OF CANADA, DECLARE:

THAT I AM OVER 18 YEARS OF AGE, AND NAMED IN THE ABOVE
MENTIONED MOTION. MY CURRENT PLACE OF CUSTODY IS:

C.M.C. WEST P.O. Box 8301 SAN LUIS OBISPO, CA. 93403-8301

ON FEB 21, 2008 OR THEREABOUTS I DELIVERED TO THE PRISON
OFFICIALS VIA INSTITUTIONAL LEGAL MAIL AS PER TITLE 15

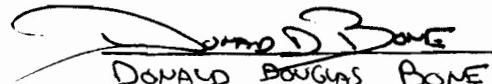
§ 3141 A COPY OF COMPLAINT UNDER CIVIL RIGHTS ACT

POSTAGE FULLY PAID AND ADDRESSED TO:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
450 GOLDEN GATE AVE.
SAN FRANCISCO, CA. 94102

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS
TRUE AND CORRECT (AS PER TITLE 28 USC § 1746)

EXECUTED THIS 21st DAY OF February, 2008 AT SAN LUIS OBISPO, CA.
ZENAS.


DONALD DOUGLAS BONE
PLAINTIFF

CONFIDENTIAL
LEGAL MAIL:

RECEIVED
FEB 25 2008

RICHARD K. WERNING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
1450 Golden Gate Ave.
San Francisco, CA
94102

CALIFORNIA MEN'S COLONY
STATE PRISON
SAN LUIS OBISPO CA 93409



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